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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,070	04/10/2004	David Jackie Hammac	DH01	3069
27797	7590	02/15/2007	EXAMINER	
RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			FASTOVSKY, LEONID M	
		ART UNIT	PAPER NUMBER	
		3742		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	02/15/2007		PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/709,070	HAMMAC, DAVID JACKIE	
	Examiner Leonid M. Fastovsky	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 April 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-20 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 April 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20040410.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application
6) Other: ____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9, 11, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Nazerian (6,235,049).

Nazerian teaches a device for heat treatment of a back portion of the patient (Fig. 5 and col. 4, lines 27-37) comprising a flexible material 2 that can be laid flat, the material having a central portion that covers the back of a person, at least one left flap 4 and at least one right flap 4, means 5 for holding the flaps together, an electric heating element 7 within the flexible material, and means 9 for connecting the heating element 7 to the source of electricity.

As for claims 2-7, 16 and 19, Nazerian teaches a first pair 4 of opposing flaps 4 attach over the chest (Fig. 5) and a second pair of opposing flaps 4 attach over abdomen-lower part of the body (Fig. 7) and capable of using them as one piece (col. 4, lines 37-46), the flaps are elastic flaps and attached by hook-and-loop fasteners 5, and the device is designed to remedy patients without restricting the freedom of movements of the patient, and therefore flaps are inherently designed to accommodate the body of the patient and must have about 30 to 45 inches to accommodate the chest and about 30 to 60 inches to accommodate an abdomen.

As for claim 9, Nazerian teaches a battery that must be 12 volts to heat the body of the patient (col. 3, lines 20-30).

As for claim 11, Nazerian teaches a temperature control unit 9 including a temperature sensor 10 to control the flow of electricity.

As for claim 12, the flexible material is made from plastic, thus inherently is waterproof (col. 3, lines 1-5).

As for claim 14, Nazerian teaches all elements of the invention and therefore meets limitations of the claim

As for claim 15 and 18, Nazerian teaches a source of electricity 9 external to the warming device (Fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nazerian in view of Bickford (4,042,803).

Nazerian discloses substantially the claimed invention including the source of electricity- a battery 17 that can be recharged, but does not disclose a converter. Bickford discloses a body heating device comprising a converter with a switch 32 converting from 110 volts AC to 12 volts DC. It would have been obvious to one having ordinary skill in the art to modify Nazerian's invention to include a converter as taught by Bickford

in order to charge the battery- the power for the heating device when the battery is discharged.

5. Claims 8, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nazerian in view of Hariu (3,839,621).

Nazerian discloses substantially the claimed invention including heating of the body of the patient, but does not disclose heating of the person's head and neck. Hariu discloses a body heating device comprising a heating element 14 and heating upper torso of the body including the head and neck (Fig. 1-4). It would have been obvious to one having ordinary skill in the art to modify Nazerian's invention to include the head and neck portions of the heating device as taught by Hariu in order to heat the head and neck of the patient when necessary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M. Fastovsky whose telephone number is 571-272-4778. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Leonid M Fastovsky
Examiner
Art Unit 3742

lmf

2/7/07